

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BUR-TEX HOSIERY INC.,	:	
	:	
Plaintiff,	:	
-against-	:	23 Civ. 3454 (LGS)
	:	
WORLD TECH TOYS, INC., et al.,	:	<u>ORDER</u>
Defendants.	:	
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LORNA G. SCHOFIELD, District Judge:

WHEREAS, the initial pretrial conference in this matter is scheduled for May 24, 2023.

WHEREAS, the Complaint alleges that the Court's subject matter jurisdiction is based on diversity of citizenship under 28 U.S.C. § 1332(a)(1).

WHEREAS, the Complaint alleges that Defendant David Linker is a citizen of the state of North Carolina. In a letter filed on May 17, 2023, Defendant World Tech Toys, Inc. stated that, on information and belief, Defendant David Linker is a citizen of Alabama. The Complaint alleges that Plaintiff is an Alabama corporation with its principal place of business in Alabama.

WHEREAS, citizenship for purposes of diversity jurisdiction is determined by a party's domicile at the time the complaint was filed, and a person has only one domicile at any given moment. *Van Buskirk v. United Grp. of Cos., Inc.*, 935 F.3d 49, 53 (2d Cir. 2019). A domicile is the place where a person has her true fixed home and principal establishment, and to which, when she leaves it, she has the intent to return. *Id.*

WHEREAS, this case was transferred to this judicial district based on a forum selection clause designating the New York federal or state courts as the parties' selected forum. As "it involves a court's power to hear a case, subject-matter jurisdiction cannot be forfeited, waived, or conferred by consent of the parties." *Platinum-Montaur Life Sciences, LLC v. Navidea Biopharms., Inc.*, 943 F.3d 613, 617 (2d Cir. 2019) (internal quotation marks omitted).

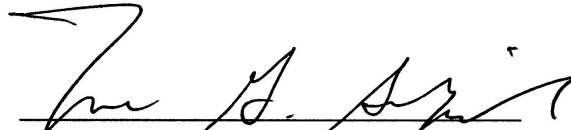
WHEREAS, the Complaint alleges that Defendant Invo 8 is a New York limited liability company. The citizenship of an LLC for purposes of diversity jurisdiction is the citizenship of its members. See *id.* at 65. It is hereby

**ORDERED** that the May 24, 2023, initial pretrial conference is **ADJOURNED to June 7, 2023, at 4:10 P.M.** The conference will be telephonic and will take place on the following line: 888-363-4749; access code 558-3333. It is further

**ORDERED** that Defendant Linker shall file a letter, by **May 24, 2023**, stating the facts pertinent to his citizenship for purposes of subject matter jurisdiction, as of October 17, 2022, when the Complaint was filed. It is further

**ORDERED** that Defendant Invo 8 shall file a letter, by **May 24, 2023**, stating the citizenship of each of its members for purposes of subject matter jurisdiction, as of October 17, 2022. If any of those members is a limited liability entity, such as an LLC or an LLP, Invo 8 shall state that citizenship of those entities' members or limited partners.

Dated: May 18, 2023  
New York, New York



**LORNA G. SCHOFIELD**  
**UNITED STATES DISTRICT JUDGE**